

NO. 17062
 FILED WITH SECRETARY OF STATE
 Date Filed 09/03/92

Richard Mahoney
 Secretary of State

By Wm. J. Greenwald

A.G. Contract No.: KR92-0613-TRN
 ECS File: JPA-91-117
 IGA FCD 92001 ⁰⁸⁵⁸
 TRACS No: H ~~2151~~ 010
 Project: 202L/East Papago Freeway
 Section: McClintock - SR 101L
 (Salt River Bank Stabilization)
 City of Tempe Contract C92-73

INTERGOVERNMENTAL AGREEMENT
 AMONG
 THE STATE OF ARIZONA,
 CITY OF TEMPE
 AND

THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

THIS AGREEMENT is entered into 3 September, 1992, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "STATE"), the CITY OF TEMPE, acting by and through its CITY COUNCIL (the "CITY") and the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, a municipal corporation and political subdivision of the State of Arizona, acting by and through its BOARD OF DIRECTORS (the "DISTRICT").

I. RECITALS

1. The STATE is empowered by Arizona Revised Statutes Section 28-108 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the STATE.

2. The CITY is empowered by Arizona Revised Statutes Section 48-572 and City Charter, Section 103 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute same on behalf of the CITY.

3. The DISTRICT is empowered by Arizona Revised Statutes Section 48-3603 to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the DISTRICT.

4. The STATE, the CITY and the DISTRICT desire to achieve 100 year flood protection along the south bank of the Salt River between McClintock Drive and SR 101L. Environmental and geotechnical studies ("the Studies") are necessary to provide information to accomplish the design and construction. The parties hereto agree to participate in the costs associated with the Studies, estimated at \$600,000.00.

5. The purpose of this agreement is to define responsibilities of each party relative to the obligation of funds.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The STATE will:

a. Upon execution of this agreement, invoice the City \$250,000.00 for its participation in the costs associated with the Studies.

b. Direct its consultant or staff to perform geotechnical testing and environmental investigations required to design and construct increased south bank flood protection from the 10 year to the 100 year level of protection.

c. After the City's participation of \$250,000.00 is exhausted, invoice the District on a monthly basis, for fifty (50) percent of the remaining costs associated with the Studies, estimated at \$175,000.00.

d. After the City's participation of \$250,000.00 is exhausted, be responsible for fifty (50) percent of the remaining costs associated with the Studies, estimated at \$175,000.00.

e. Upon completion of the Studies, submit final reports to the CITY and the DISTRICT for review and comments.

2. The CITY will:

a. Participate in the costs associated with the Studies in an amount not to exceed \$250,000.00.

b. Within thirty (30) days upon receipt of an invoice, pay to the STATE \$250,000.00 for participation in the costs associated with the Studies.

c. Review and comment upon completion of the Studies.

3. The DISTRICT will:

a. After the City's participation of \$250,000.00 is exhausted, be responsible for fifty (50) percent of the remaining costs associated with the Studies, estimated at \$175,000.00.

b. Upon receipt of a monthly invoice, remit payment to the State within thirty (30) days.

c. Review and comment upon completion of the Studies.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Studies and reimbursement of actual costs of the studies; provided, however that this agreement may be cancelled upon thirty (30) days written notice to the other parties.

2. Neither party to this agreement agrees to indemnify the other party or hold harmless the other party from liability hereunder. However, if the common law or a statute provides for either a right to indemnity and/or a right to contribution to any party to this agreement, then the right to pursue one or both of these remedies is preserved.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, M.D. 616E/Rm. 222E
Phoenix, AZ 85007

City of Tempe
115 E. 5th Street
Tempe, AZ 85282

Flood Control District
of Maricopa County
Chief, Planning Branch
2801 West Durango
Phoenix, AZ 85009

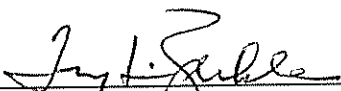
8. Attached hereto and incorporated herein is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF TEMPE


STATE OF ARIZONA

Department of Transportation

By 
TERRY ZERKLE
City Manager

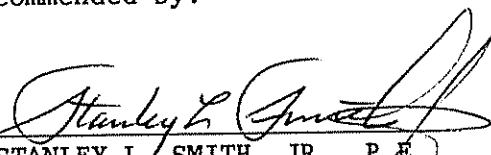
By 
FOR ROBERT P. MICKELSON, P.E.
Deputy State Engineer

Attest

By 
Helen R. Fowler
City Clerk

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
a Municipal Corporation


Recommended by:

By 
STANLEY L. SMITH, JR., P.E.
Acting Chief Engineer and
General Manager

7-6-92
Date

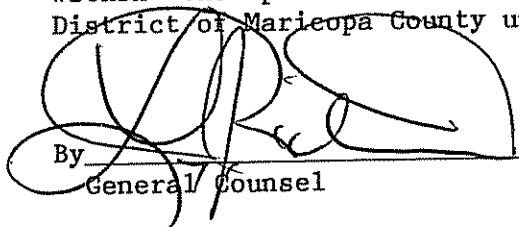
Approved and Accepted:

Attest:

By 
Betty Bayless
Chairman, Board of Directors

By  8/3/92
Clerk of the Board Date

This Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes 11-952, as amended, by the undersigned General Counsel, who has determined that it is in proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

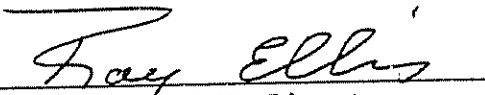
By 
General Counsel

7-7-92
Date

RESOLUTION

BE IT RESOLVED on this 30th day of September 1991, that I, CHARLES E. COWAN, as Director of the Arizona Department of Transportation, have determined that it is in the best interest of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the Flood Control District of Maricopa County for the purpose of determining that it is feasible to construct additional bank protection beyond that needed for for the freeways along the south bank of the Salt River.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.


for CHARLES E. COWAN, Director
Arizona Department of
Transportation

RESOLUTION NO. 92.21

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION AND THE MARICOPA COUNTY FLOOD CONTROL DISTRICT CONCERNING THE FUNDING OF ENVIRONMENTAL AND GEOTECHNICAL STUDIES FOR THE CHANNELIZATION OF THE RIO SALADO PROJECT AREA BETWEEN MCCLINTOCK DRIVE AND SR 101L.

WHEREAS, the City of Tempe and the Maricopa County Flood Control District are desirous to continue the improvement of the Salt River between McClintock Drive and SR 101L; and

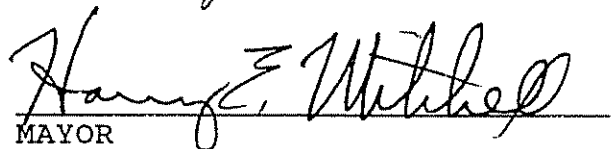
WHEREAS, the State of Arizona will conduct environmental and geotechnical surveys in order to complete the project; and

WHEREAS, the City of Tempe, Maricopa County Flood Control District and the State of Arizona previously entered into a Letter of Intent to fund the necessary studies.


NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA:

1. That the Manager of the City of Tempe is hereby authorized to execute an agreement with the State of Arizona, Department of Transportation and the Maricopa County Flood Control District and authorize the expenditure of the sum of \$250,000.00 towards the environmental and geotechnical studies to further the Salt River channelization, City of Tempe Project No. 876191.

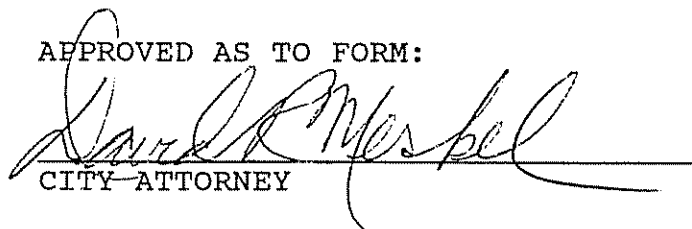
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 31st day of May, 1992.


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

JPA 91-117

APPROVAL OF THE TEMPE CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY and the CITY OF TEMPE and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 19 day of June, 1992.

Karen S. Gaylord

City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON. PHOENIX 85007

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

August 20, 1992


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR92-0613-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 20th day of August, 1992.

GRANT WOODS
Attorney General


JAMES R. REDPATH
Assistant Attorney General
Transportation Section

7695G/13